

AN ANTI-SLAVERY EPISODE IN WISCONSIN.

The time seems to have come when a dispassionate, impartial study of the events connected with our last great national struggle is not only a possibility, but an object of earnest desire in all quarters. As the study proceeds the interest deepens, and the magnitude of the events grows upon us, while the subtle causes of the Rebellion recede from view. There is, however, little disposition to deny that, directly and indirectly, the great, overshadowing cause of that terrible four years' strife was the institution of slavery, and to show how the enroachment of the slave power aided powerfully to array the intellect, wealth, and resources of a hardy Western State against the intellect, wealth, and resources of her sister-States of the South long before the firing upon Sumter, is the purpose of this article. The attempted execution of the fugitive slave law in Wisconsin, as in other free States, roused the people as they had never been roused before, but in Wisconsin it had perhaps more serious results than in any other of the Northern States, for it led to a conflict between the National and State courts which threatened ultimate secession, not in the South, but in the free North.

It may well seem surprising that dangers of this kind should have arisen in loyal, peace-loving Wisconsin, a State largely populated by settlers from New England and the Middle States, and by conservative, law-abiding Germans. But it must be borne in mind that, to a large majority of this population, the fugitive slave law of 1850 was obnoxious in a degree hardly to be conceived of by the present generation. Whatever the legislators of the time may have thought, the great thinking, acting masses at the North held it an injustice to be compelled to deliver up the hunted black fugitive without even the form of trial by jury. The law was repugnant to their traditional sense of right. It has been said that the Southerner lived on tradition. So, too, did his Northern brother, and the traditions differed as the climate of Wisconsin from that of balmy Florida. It was no ordinary discontent that began to manifest itself in the North after 1850. The fugitive slave law was detested as no national enactment had ever been detested before, nor has the popular hatred of the measure been paralleled since. Words could not be found strong enough to express the general loathing. When Edward Daniels, pleading guilty at Milwaukee to the charge of aiding in resistance to the execution of this law, denounced it before the court as an "infamous" enactment, he probably expressed the sentiments of a large majority of Wisconsin's citizens.

Such being the condition of public opinion in the State, we do not wonder so much at the occurrences of 1854-60. Wisconsin was enlisted at an early date against the extension of slavery to the territories. During the pendency of the Kansas-Nebraska bill in Congress, according to Henry Wilson, the first organized movement in the country looking towards the formation of the Republican party had its origin in a Wisconsin community, and one of the first State conventions of that party was held at the State capital in the summer of 1854. Just at this period the fugitive slave law, with all its revolting provisions, was thrust before the people of this new free State in a way which the witnesses of those events can never forget. The so-called "Booth War" is the most famous instance of resistance to the law in Wisconsin, or perhaps in the entire Northwest, and as it resulted in a memorable conflict between National and State

authority, it is worthy of the historian's careful study.

Sherman M. Booth was engaged as early as 1848 in the publication of a free-soil paper in Milwaukee. He was probably identified, from this time on, with the anti-slavery sentiment of the State. It is not strange, then, that when, in the early spring of 1854, an alleged fugitive slave, known as Joshua Glover, was taken from his home at Racine and brought to Milwaukee for imprisonment, Booth was active in demanding a writ of *habeas corpus* and a trial by jury. These demands were refused, and a crowd of angry citizens rushed upon the jail and liberated Glover. Booth was then arrested and held to bail by the United States Court Commissioners charged with assisting and abetting in the rescue of Glover, and now began one of the most interesting legal contests in the annals of Wisconsin. Having been surrendered by his bailer, Booth petitioned Justice Smith, of the State Supreme Court, for a writ of *habeas corpus*, which was granted, the justice holding the fugitive slave law of 1850 unconstitutional and void, in that it provided for a trial by officers not recognized by any constitution, State or National. "Other courts and other judges," said the justice, "may pronounce this provision of the act of 1850 to be in conformity with that provision of the Constitution which declares that 'no person shall be deprived of life, liberty, or property without due process of law,' but while I have a mind to reason and a conscience to dictate me, and an oath to support the Constitution of the United States resting upon my soul, I cannot so declare it, and for the price of worlds I will not." Such was the spirited remonstrance of a Wisconsin judge against the manifest injustice of a National statute.

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The full bench concurred with Justice Smith, declaring that the free States could never yield their sovereignty to the process of officers unknown to the Constitution, and sustaining the writ of *habeas corpus* to Booth. This decision of the Wisconsin Supreme Court is said to have been the first formal annunciation of the State-rights theory in the North. It was a bold, aggressive plea for the sovereignty of the free States. As such, it is perhaps open to many of the charges contained in Webster's massy indictment of the theory in his reply to Sumner; but it was by no means so revolutionary as it has been represented to be. It is a noticeable fact that the judges appealed repeatedly to the National Constitution to support their positions. They held that the law of 1850 violated some of the most sacred guarantees of that cherished instrument, and they would not give the sanction of Wisconsin's judiciary to such a violation. It was not that they placed the laws of their State above those of the nation, but rather the fundamental law, as found in the Constitution, above what they considered the usurpations of a pro-slavery Congress; and this, it must be remembered, pending the decision of the United States Supreme Court. Such sentiments can hardly be called disloyal. Their animating spirit was not unlike that of the American Colonies in their appeals to the Mother Country before the Revolution. They did not refer to that "higher law," of which Senator Sumner, in later years, was the avowed champion. They rested their case upon the principles of justice, but they went no farther than to the Constitution of the nation to find those principles. The right of trial by jury and the *habeas corpus*—what are fundamental axioms of free government than these? said the Wisconsin judges in 1854.

The United States District Court at once claimed jurisdiction of Booth's case, and caused his arrest. He was tried on two counts—aiding in Glover's escape, and resisting an officer. The jury found him guilty of the first offense, and acquitted him of the second. The judge sentenced Booth, however, on the whole indictment. He fined him \$1,000 costs and imprisoned him until the fine and costs should be paid.

Booth's application to the State Supreme Court for a writ of *habeas corpus* was again granted, on the ground of illegal imprisonment, and thus another stage was reached in this singular case.

Meanwhile the attention of the entire North had been drawn to the matter. Indignation meetings had been held everywhere, and sums of money subscribed to pay Booth's fines and expenses. Whether or not, the free States felt that the execution of the law was a dangerous encroachment of slavery upon freedom. Booth was considered an oppressed man, and sympathy with him in his misfortune was as general as the hatred of the law.

At the news of his release from custody there was universal rejoicing in the State, and the people stood ready to defend their court in the course that it had taken to restrict the operation of the obnoxious statute. Sumner, Wilson, Greeley, and other anti-slavery leaders, readily gave their aid and counsel to Booth and his friends, and the final outcome was awaited with intense interest in the North, while the South looked on in sullen nonchalance. The civil suits instituted by Garland, the alleged owner of Glover, to recover the value of the slave from Booth, were not successful, though extremely harassing, and Booth seemed in a fair way to escape further litigation, at least in Wisconsin, when the United States Supreme Court, after many abortive attempts, obtained a record of the original case in the district court, and ordered the State court to reverse its proceedings granting Booth a writ of *habeas corpus*, and to send him back to Federal custody. The State court flatly refused to obey this mandate, and in this refusal it was sustained by the Legislature of the State. All the free States, through their Legislatures, endorsed the action of Wisconsin. This was in 1859, five years after the beginning of the struggle.

There was a revival of the Booth excitement in the spring and summer of 1860. Booth was re-arrested and imprisoned upon the old charge. Public sentiment was stronger than ever in his behalf, and he was liberated from prison by Edward Daniels, afterwards the organizer of the first regiment of Wisconsin cavalry. It was known that Daniels acted upon the counsel of Charles Sumner, and friends of the anti-slavery cause enlisted in his aid throughout the State. Booth was hunted from one town to another by the United States officers, but for weeks they failed to take him. He delivered speeches attacking the fugitive slave law. At one of these speeches a marshal was driven from the hall on attempting to arrest Booth, and so great was the public indignation that the officer was glad to escape with his life. The excitement attending Lincoln's first campaign was greatly intensified in Wisconsin by scenes like this, and the Booth episode played no small part in the loyal uprising of the people at that time.

After Booth had finally been captured by the officers, while off his guard, he languished in jail until pardoned by President Buchanan, on the advice of Secretary Stanton, just before the inauguration of Lincoln. Thus ended a noteworthy seven-years' struggle for freedom just at the outbreak of the great struggle in which all smaller contests merged. The prosecution of Booth undoubtedly roused animosities which helped to arm the North against rebellion. The denunciations, on both sides, were bitter, and no doubt they were unjust. The men of the South were not all inhuman monsters, nor were the men of the North all slave-

